IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 41 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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NIZAMUDDIN GYASUDDIN SHAIKH - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS KD PARMAR for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 21/01/2006

ORAL JUDGMENT

1.Nizamuddin Gyasuddin Shaikh, petitioner has filed this petition under Article 226 and 227 of the Constitution

of India with a prayer that this Court may be pleased to quash and set aside the order of externment dated 5/2/2005 passed by the Deputy Police Commissioner, Ahmedabad which has been confirmed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, respondent no.1 vide order dated 5/11/2005 as being illegal, invalid, null and void, arbitrary, suffers from non application of mind and violative of the Articles 14, 19 and 21 of the Constitution of India. Petition was filed on 23/12/2005. This Court has issued Rule on 12/1/2006 which was returnable on 19/1/2006. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. So, with consent of parties, matter is taken up for final hearing.

2.Ms.K.D.Parmar, learned advocate for the petitioner has stated that though there are several grounds in this matter, she only confined to only one ground i.e. ground of delay. She has submitted that authority has issued show cause notice on 5/12/2003 for externing the petitioner. Thereafter, the petitioner has filed reply on 30/12/2003 and the petitioner has filed second reply on 30/12/2004. Thereafter, some persons were also examined and ultimately the authority has passed an externment order on 5/2/2005. Though the order of

externment has been passed after long time, the authority has not given any reason as to why there is a delay in passing the order. The learned counsel for the petitioner has stated that the authority has passed an order after long delay.

3. It may be noted that petitioner has also filed Appeal before the appellate authority on 1/3/2005 and the appellate authority has rejected the same on 5/11/2005.

4. In support of the same, the learned counsel for the petitioner has relied upon the judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Case No.1451 of 2005 decided on 1/12/2005.

5. The learned counsel for the petitioner has also invited my attention to the order passed by the authority and she has stated that authority has not explained about the delay, caused in passing the order and therefore, it is unexplained delay and therefore, the order of externment is required to be quashed and set aside. The learned counsel further submitted that the authority has not filed any affidavit justifying the delay in this behalf. In view of the reasons and judgment given

by this Court, that if there is an unexplained delay or unjustified delay, the authority could not pass the same order. So, taking over all view, the order of externment is liable to be quashed and set aside.

6. On behalf of respondent, Mr.L.R.Pujari, learned APP has tried to support the order of externment in this behalf.

7. Having heard both the learned advocate for the parties and perused the material and evidence on record, in my view, the show cause notice is issued on 5/12/2003 whereas the order of externment was passed on 5/2/2005. In the body of the order, the authority has not explained the delay. Therefore, in my view, there is unexplained delay. Therefore, the order of externment deserves to be quashed and set aside on the ground of delay.

8. I have considered the facts and circumstances of the case. In view of the judgment of this Court in Special Criminal Application No.1451 of 2005 (supra), the contention of the learned advocate for the petitioner is required to be accepted. The authority could not pass the said order.

9.In view of the same petition is allowed. Order of externment dated 5/2/2005 is quashed and set aside and order dated 5/11/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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